

COMMISSIONERS APPROVAL

ROKOSCH



GRANDSTAFF



THOMPSON



CHILCOTT



DRISCOLL



PLETTENBERG (Clerk & Recorder)

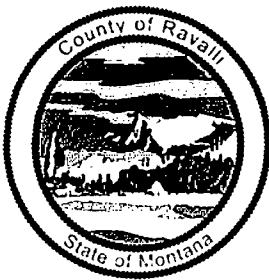
Date.....July 5, 2007

Members Present.....Commissioner Jim Rokosch,
Commissioner Carlotta Grandstaff, Commissioner Alan Thompson, Commissioner Greg
Chilcott and Commissioner Kathleen Driscoll

Minutes: Beth Farwell

The Board met to consider material modification to the filed subdivision plat of Sapphire
Country Estates Lot 2E material modification. Planners John Lavey, Randy Fifrick,
Renee Van Hoven were present.

John gave the following staff report:



REQUEST FOR COMMISSION ACTION

OG-07-06-715

Meeting: July 5, 2007 @ 9:00 a.m.

Request: To conditionally approve the Sapphire Country Estates, Lot 2E,
Material Modification

I. ACTION REQUESTED

This is a request from Dale Janes, represented by Colleen Dowdall, to approve
the **Sapphire Country Estates, Lot 2E, Material Modification of a filed plat.**

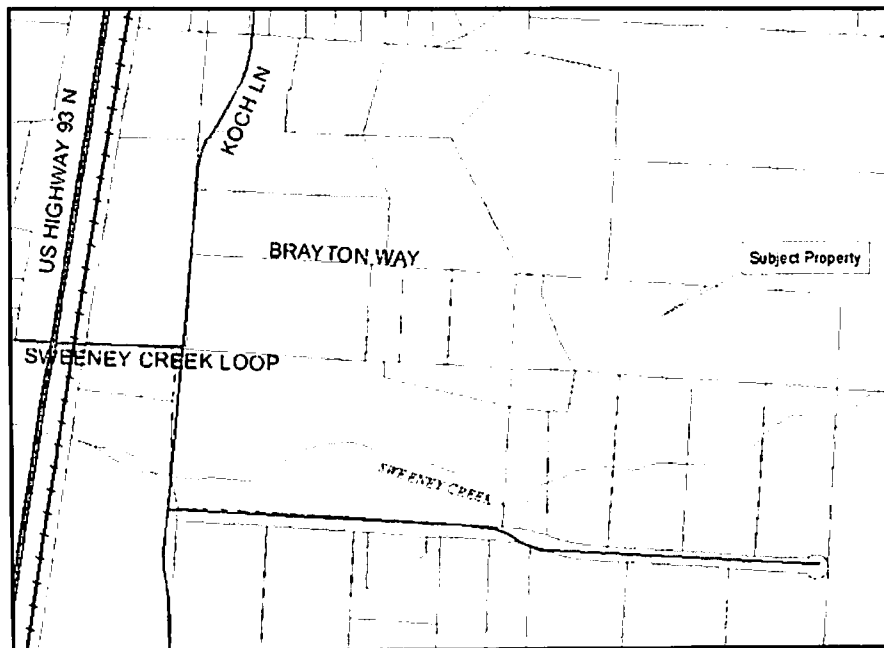
II. BACKGROUND

Section 3-4-6(b) of the Ravalli County Subdivision Regulations (RCSR) allows modifications to filed subdivision plats. These "material modifications" are allowable only if the proposed modification does not constitute a subdivision and cannot be considered an error on the face of the plat.

The applicant Dale Janes is requesting a material modification for Lot 2E of Sapphire Country Estates, originally a five lot subsequent minor subdivision given conditional approval in April of 1999. The final subdivision plat was filed with the Clerk and Recorder in January of 2001. As a condition of approval for the original 1999 division, the applicant was required to show a "no-build zone" on Lot 2E, which precludes the construction of buildings and structures within its envelope. The applicant is proposing to remove the no-build zone designation from Lot 2E and replace it with a "restricted area" designation. The applicant's proposal would allow for the construction of agriculturally related outbuildings, but preclude the construction of residences.

Lot 2E is currently undeveloped and is vegetated with a mixture of grasses and shrubs.

Staff is recommending conditional approval of the material modification proposal.



Map 1: Location Map
(Source Data: Ravalli County Planning Department)

III. STAFF FINDINGS

Planning Staff makes the following findings in relation to this proposal:

1. The applicant is proposing to amend the current no build zone designation on the plat and replace it with a "Restricted Building Area" designation. The proposed re-designation would allow for the construction of agricultural outbuildings, but preclude the construction of residences.
 - a. The current no build zone begins at the top of a bench on the western portion of Lot 2E. The applicant is proposing to relocate the boundary of the proposed Restricted Building Area to the base of the bench.
2. The owner of record, Dale Janes, has the legal authority to request a material modification to the filed subdivision plat of Sapphire Country Estates, Lot 2, AP as described in the Ravalli County Subdivision Regulations (RCSR), Section 3-4-6(b).
3. The public hearing for the proposed material modification was properly noticed in accordance with Section 3-2-4 (Public Hearing – Notification Requirements) of the RCSR.
 - a. Notifications included the publication of a legal ad in the Ravalli Republic, written notice describing the proposal sent via certified mail to the applicant and all adjoining landowners, placement of a poster describing the proposal on the property, notifying the Planning Board of the proposal, and notifying affected agencies.
 - b. According to Section 3-2-4, property owners adjoining the subdivision are to receive a certified notification of the public hearing. This section further states that "The failure of any person required by this section to receive the notice shall not invalidate or otherwise have any effect upon a public hearing or action taken on the application".
 - c. Property owners not adjoining the subdivision were not notified.
4. The proposed material modification is not considered an error on the face of the plat and does not constitute a subdivision.
5. The preliminary hearing for Sapphire Country Estates, Lot 2E, AP subsequent minor subdivision was conducted by the Ravalli County Planning Board on February 10, 1999. At the preliminary hearing, the

applicant's representative, Denis Applebury of Applebury Survey, presented the proposed preliminary plat. It appears from the record that the no build zone was shown on the preliminary plat. From the February 10, 1999 minutes: "Kirk [Thompson] commended Denis for the no build zone on the wet flat and he told Denis that it needs to be defined on the plat and Denis said he would do that."

6. The public hearing for the proposal was held on March 10, 1999. At this hearing, Terry Nelson of Applebury Survey presented the proposed amended plat. The minutes reflect that Mr. Nelson relayed to the Planning Board that there is a low area on the east of the subdivision, that the low area will have a no build zone placed upon it, and that the no build zone will help protect the natural environment.
7. The Preliminary Plat Decision (PPD) for the Sapphire Country Estates, Lot 2, AP, subsequent minor subdivision was mailed to the applicant on April 2, 1999.
8. The PPD makes the following findings in support of placing a no build zone on Lot 2E:
 - a. Section 4(d)(1): "There are no known wetlands on the subject property, except for those associated with the low area located on the easternmost portion of Lot 2E".
 - b. Section 4(f)(5): "The property is not located within the defined 100-year floodplain [of the Bitterroot River] as adopted by the Board of County Commissioners".
9. As a condition of approval for the original subdivision, the applicant was required to designate a single building site on Lot 2E for a residential structure and designate the remainder of the parcel as a no build zone.
10. A description of a no build/alteration zone is included in the covenants, which were filed with the final subdivision plat on January 12, 2001.
11. The applicant was not required to include the description of the no build/alteration zone in the covenants.
12. The provisions contained in the covenants for Sapphire Country Estates, Lot 2, AP can be amended, revoked, or altered only with the majority approval of lot owners subject to the covenants *and* the consent of the Board of County Commissioners of Ravalli County.
 - a. The applicant is proposing to file a separate covenant against Lot 2E that would reflect the proposed Restricted Building Area designation. The applicant is not proposing to gain the majority approval of lot owners to amend the existing covenant.

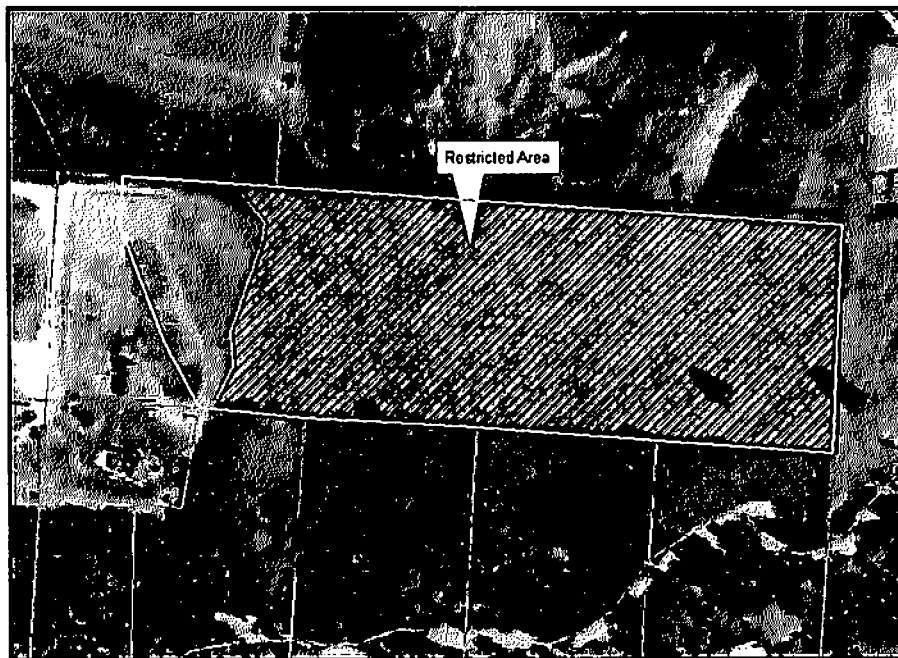
IV. PLANNING STAFF'S RECOMMENDED MOTION

That the material modification for Sapphire Country Estates, Lot 2E be conditionally approved.

V. PLANNING STAFF'S RECOMMENDED CONDITIONS

The following conditions are recommended to preserve as much as possible the intent of the original plat approval.

1. The amended final plat shall show a restricted area beginning at the top of the bench and extending to the eastern property boundary. (Map 2) [Staff note: Recommended Restricted Area preserves the same area originally included as a no build zone.]



Map 2: Approximate Location of Restricted Area
(Data Source: Ravalli County GIS Department)

2. The following statement shall be shown on the amended final plat: "Notification of Restricted Area. There is a restricted area on Lot 2E from the plateau of the bench east to the property boundary, as shown on the filed plat. No residential dwelling may be constructed in this area. Agricultural buildings and outbuildings shall be permitted." [Staff note: Allows for outbuildings, but generally maintains integrity of original no build zone.]
3. Amended protective covenants shall be submitted with the amended final plat that includes the following language: "Notification of Restricted Area. There is a restricted area on Lot 2E from the plateau of the bench east to the property boundary, as shown on the filed plat. No residential dwelling may be constructed in

this area. Agricultural buildings and outbuildings shall be permitted." As noted in the covenants filed with the original subdivision plat, the applicant shall provide evidence that a majority of the lot owners subject to the covenants agree to the proposed amendment. *[Staff note: Allows for requested changes, but also preserves integrity of existing covenants. Compliance with existing covenants is required by subdivision regulations for all subdivisions.]*

4. The scope of the final amended plat shall show only Lot 2E and must conform to the uniform standards for filing final plats (ARM 8.94.3003).

REMAINING ISSUES:	None known
FISCAL IMPACT:	No extraordinary fiscal impacts noted.
ATTACHMENTS:	Application package Public comments Planning Board minutes from June 6, 2007
STAFF:	John Lavey
DATE:	June 25, 2007

Commissioner Rokosch opened public comment.

Attorney Colleen Dowdall was present to represent Dale and Rosie Janes. She made a presentation to the Board which was similar to the staff report by Planner John Lavey. She stated when the owners discovered the no-build zone on the property; they knew they had to bring it before the Commissioners. Lot 2E is a 10 acre lot and has a no-build zone by designation due to riparian reasons. The existing covenant stated there is a no build/alteration of the low area of this parcel. They are requesting the Board allow outbuildings on the lower portion of Lot 2E and rename the "no-build zone" to "restricted area" allowing out-buildings. She also noted they would need to change the language in the covenants and on the plat to read restricted area. She discussed the reputation of the current owners, and noted that in her opinion, the covenants do not have to be amended.

Dale Janes stated they spent a lot of time at this property talking about his plan for building on this site. Through his advice and others, they have built a nice subdivision. He has built homes for over 30 years. Had they known that a no-build zone meant you couldn't build an out-building; they would have said something earlier.

James Moore and his wife Judy stated they are the prospective buyers of Lot 2E. They are from Colorado and lived on a little ranch in a small town for the past 31 years. He designs green homes with an environmental passive solar design. Anything they build on this site will be both beautiful and environmentally conscious. Judy is an animal behaviorist. They are both horse lovers and have several horses at their ranch. There has been a misconception and not sure of how it developed. He had met some of the neighbors when they had viewed the property last summer, and he spent time with the Office of Environmental Health, Applebury Survey, and the Planning Staff regarding the no-build zone. He had told the neighbors he had horses and last fall he told one of the

neighbors they wanted to have an indoor training area for the horses. He believes the neighbor felt they were going to develop this into a large commercial area for horse training. He doesn't believe covenants dictate what neighbors should or shouldn't do. He expects cordial and cooperative relationships with people. He would like to clear up any misconceptions and is willing to work with his neighbors. He stated that his proposed barn would be 21 feet below the neighbors and it is not in a floodplain or wetland area.

Carol Mavros, President of the Homeowners Association for Sapphire Country Estates, summarized a letter that was sent to the Commissioners. She stated the proposed area was going to be used as a training arena 66' by 100'. There is a no-build zone on Lot 2E; this indicates nothing can be built except a fence. She questioned what the covenant is used for if not to protect the current owners. She believes that in order for the covenant to be changed, the current homeowners should have some say rather than a decision by the Board of County Commissioners.

Mike Jakeway, owner of Lot 2D, stated there is quite a history with Dale. He doesn't know these folks. This shouldn't be about their intentions, but the established covenant. Dale stated that he did not know what the covenant consisted of when it was approved, however the covenant clearly stated what you as a homeowner could or could not build on this lot. Everyone who bought into this subdivision had the understanding that this was going to be kept as open land. The original price on this lot was \$80,000 and now it is \$190,000. I understand Dale wanting to sell this property but he should not have gone around the current homeowners and try to change the existing covenant.

Carol asked if this gets approved, will the Janes' be able to build a bigger facility. And if so, what protects the homeowners from getting a business built.

Colleen stated the Commissioners should be focusing on two issues; one is the covenant and the other is the plat.

Mike Shaw stated he did not receive a letter telling him about any proposed covenants changes. He stated that he is not telling anyone what they can do with their property and does not know why they are even here today.

Public comment was then closed.

Commissioner Driscoll noted for the record she has known Colleen for many years.

Commissioner Grandstaff stated that she doesn't know why they are here either. If the homeowners do not agree with the amendment of the covenant, there is not much the Board can do. Colleen replied she doesn't think they have to amend the existing covenant, but rather a deed restriction or a new covenant stating the particular area on that lot is a restricted area for buildings.

Civil Counsel Alex Beal stated he disagrees with Colleen. He stated the existing covenants would have to be amended.

Commissioner Chilcott stated it is a matter of procedure. It seems to him any amendments to the covenants must be approved by the homeowners, and without that consent, there is no reason for this Board to meet today.

Colleen stated they would like to obtain approval for the final plat modification.

Commissioner Driscoll stated that Colleen knew there was a no-build zone. She stated Colleen joined with the primary plat.

Commissioner Chilcott stated he understands why the parties are here, but this issue should have already been worked out prior to bringing it before the Board. He stated they can not move forward unless the homeowners agree with the amendment to the covenants.

Colleen stated they are asking the Commissioners to give consent to amend the covenant in order to seek the final plat approval.

Commissioner Rokosch stated he doesn't believe the original sale is what should be questioned but rather the existing covenant.

Jay Gilmartin stated he has been involved in the whole process. From the beginning it was always their intent to reserve that parcel for a nice home that could also allow room for horses. Jay stated the interpretation of the 'no build zone' was that no one builds a residential structure in the lower portion of the lot. He did not find out until this fall that the 'no build zone' meant the entire property.

Commissioner Thompson stated in his opinion this is 'cut and dry'. He stated he would approve this change if the majority of the homeowners agreed to it. He felt the homeowners need to designate and understand what their neighborhood will look like and agree to keep it that way.

Commissioner Grandstaff requested clarification of why the owner did not understand the no-build zone. Jay replied the surveyor did not convey that it would include the entire property.

Colleen stated the issue is what exists on the plat.

Commissioner Grandstaff made a motion to deny the material modification of Sapphire Country Estates, Lot 2E, and further stated the homeowners should bring the amendment to the covenant forward. At that time the request for material modification can be resubmitted to the Board of County Commissioners.

Commissioner Rokosch requested clarification of why they need a motion.

Commissioner Thompson stated the Board is not amending anything, and while they are listening to what is being said, they are not making any changes. Thus there is no Board action.

Commissioner Chilcott stated they do need a motion as they are not taking the action recommended by the planning staff.

John recommended the Board's approval of the material modification with the condition that the homeowners approve the covenant and plat amendment prior to the filing of the final plat.

Brief discussion followed regarding the motion requested.

Commissioner Grandstaff restated her original motion. Commissioner Driscoll seconded the motion.

John asked if they could bring it back to the Board with homeowner's approval. Commissioner Rokosch replied they could.

Commissioner Rokosch, Commissioner Grandstaff, Commissioner Thompson and Commissioner Grandstaff voted "aye" to her motion to deny. Commissioner Chilcott voted "nay". Motion carried.

Minutes: Glenda Wiles

In other business, the Board met to discuss and decide on the remaining Commission Board appointments. Discussion took place on the Bitterroot Economic Development Committee which is comprised of Ravalli, Missoula and Mineral Counties. Commissioner Chilcott noted this organization brings the three counties together for economic development strategies. Commissioner Chilcott is the vice chair of this Board and he indicated he would like to stay on this board. This is a voting position with one meeting per quarter. Commissioner Rokosch and Commissioner Driscoll stated they also have a strong interest in economic development. Commissioner Driscoll stated she could be the back up to this board if needed, and Commissioner Rokosch will also attend. It was agreed Commissioner Chilcott will continue to be the county designee.

In regard to the Rocky Mountain Liaison Group, Commissioner Chilcott stated this meets on a quarterly basis. He stated he would have no problem allowing someone else to sit on this board. Commissioner Grandstaff expressed desire to sit on this board. The Board concurred Commissioner Grandstaff will now be that liaison.

In regard to MR. TMA, Commissioner Chilcott has been a member of this board for 4-years. He stated he would like to continue to this board as there are many changes coming about due to the work they have done over the years. He also explained the differences between the Transportation Advisory Committee and the Transportation

Committee (for local schools) etc. It was agreed Commissioner Chilcott will continue to serve on MR TMA. Commissioner Rokosch will serve on the Transportation Committee.

In regard to the Transportation Advisory Committee, it was agreed to allow Commissioner Driscoll to serve on this committee.

In regard to the new Long Range Transportation Plan Steering Committee that is being put together with Missoula County; it was agreed to allow Commissioner Driscoll to serve as the county representative.

In regard to the LEPC (Local Emergency Preparedness Committee), Commissioner Chilcott has served on this board. It was agreed that Commissioner Rokosch will now serve on this board.

It was agreed to have Commissioner Chilcott continue to serve on the RC & D (Resource Conservation District).

In regard to state and federal boards, Commissioner Thompson serves as a Resource Advisory Board member which is a Secretary of Agriculture appointment.

In regard to the National Public Lands Committee (Forest Counties) and WIR, Commissioner Thompson has been appointed by the state association to sit on these boards.

It was agreed Commissioner Chilcott will continue to serve on Urban County Committee as appointed by the State.

Commissioner Chilcott will continue to serve on the JPIA Executive Board which is an appointment by MACo.

In other business, the Board reviewed the applicants for the Impact Advisory Committee that will be approved by Resolution on July 25th. This committee will be a five-member board. The statute requires a member of the development community and a CPA, with three members being citizens. The Board reviewed the resumes finding two CPA's, three members of the development community and numerous citizens. Commissioner Thompson stated he would like to stay away from committee members that already serve on other boards. Commissioner Grandstaff agreed.

Citizen Dave Schultz agreed other citizens need to become involved, not the same ones that serve on other boards. He also thought it is important to have a female serve on this board for some gender equity.

Ben Hillicoss stated he has no problem if he is passed over. He already serves on two boards, but wanted enough applicants for the pool.

John Meakin stated this committee is not only going to be responsible to work with each other, but they will work with other agencies. Therefore, it is important to have a good gender mix, obtain people that have experience in working with other agencies and obtain people that have the available time.

It was agreed to interview Mr. Harkin and Mr. Capua as CPA's; Ms. Steffes and Mr. Gantt as members of the Development Community; and Steve Hall, Doug Soehren, John Meakin, Candace Jerke, Dick Ellis and Rick O'Brien as Members at Large. Glenda will set up those interviews, and the Planning Office will develop a list of questions for the Commissioners to review them.

The Board met for an update from the Forest Service. Nan Christianson, Barry Paulson, Barb Beckes, and Beth Merz were present. Also present was County Attorney George Corn, Under Sheriff Kevin McConnell, Office of Emergency Services Coordinator Ron Nicholas and Planner Vanessa Perry.

Barry explained conditions are very dry and hot right now. He gave an update of the training the Forest Service personnel are receiving.

Commissioner Rokosch asked when they thought they might invoke the Stage One restrictions. Barry replied within a couple of weeks.

George Corn stated the Board has authority to pass an emergency resolution to help the Sheriff's Department exercise the egress and ingress as they did during the fires of 2000. Under Sheriff Kevin McConnell stated the Sheriff's department is taking steps to prepare for the fire season. Fire orders are already out.

Commissioner Driscoll asked if there were other things that could help prepare for these types of emergencies. Barry stated Ravalli County seems to be proactive and they are on top of campfires, smoking, and other fire dangers.

Commissioner Grandstaff asked if educational videos are being distributed. Nan indicated they are distributing videos and have landowner training session.

Commissioner Rokosch also asked to be briefed on the support from the Forest Service in regards to interim zoning efforts within the county.

Barry stated they have a new fire management officer. They have reviewed the funds to suppress fires and have determined they can spend monies on fires such as Gash Creek.

Office of Emergency Services Coordinator Ron Nicholas stated with the Commissioners approval, he could prepare a Resolution for the 2 mill emergency levy, in case they have a severe fire. He also noted there is a buffer zone which allowed Northwest Energy personnel to do work within a mile of the boundary. He also noted this buffer zone caused confusion among the Forest Service personnel.

Ron noted the county has used volunteers in the past and we were questioned if we could even spend the money to feed them. He and Charmell Owens have paid monies out of their own pockets to feed these volunteers. He stated there should be something in place for these types of emergencies.

Commissioner Chilcott noted if the county ends up declaring a disaster, the budget will need the 2 mills.

Commissioner Thompson stated if we do have a fire emergency this summer, we should have weekly updates with the Forest Service. He commended the Forest Service with their past work and continued service.

Barry stated he would like to focus on Commissioner Rokosch's request to update the county on their support of the interim zoning efforts.

Commissioner Driscoll stated some of Barry's information would help the Board tremendously in their zoning efforts.

Barbara stated they do have a lot of information they can provide. There are certain areas they would like to address with wildlife movement such as elk habitat.

Commissioner Rokosch stated the water resources, water quantity and water quality related to fisheries is also important. There are two potential ways to accomplish integration; being familiar with the work plan and the timeline in regard to the overall public involvement is very important. He also noted the water sheds and the sheep habitats need to be addressed for land use suitability analysis. There is a scientific basis to develop subdivision regulations and ultimately have them engaged. We can make the recommendations and still recognize the uniqueness of these areas.

Commissioner Grandstaff requested Vanessa Perry give an update on LDAR mapping.

Vanessa stated the open lands have a 50 foot contour range. Last year Ravalli County submitted a grant to DNRC so a map of the northern lands of the county could be mapped. This included a grant to fund another 114 square miles of mapping. She presented the Board with an update of the Planning Department's progress and how the Forest Service could be involved.

Commissioner Rokosch indicated within the open lands issue it is important to have a strong engagement with the Forest Service.

Nan invited the Commissioners to attend the National Strategic Plan the Forest Service is hosting.

Commissioner Chilcott requested clarification of open space. Nan replied open lands can be a bike path in the community, or wild lands, open forests and or agricultural lands. She stated the Forest Service does not want to be perceived as regulatory enforcers. She also noted a Strategic Plan is needed in order to prioritize the lands.

Commissioner Rokosch stated the land suitability analysis could be information that is brought to the public.

Nan indicated they would be happy to come in once a month and have these discussions if needed.

Barry stated they are looking at purchasing about 160 acres of open land up the Kalakh – Brennenbroug area. Currently the Forest Service land is landlocked in that area. There is big horned sheep and elk in the area along with many other species of special concern.

Commissioner Grandstaff asked if the Bitterroot Land Trust could possibly purchase the land while the Forest Service is researching funding possibilities. Barry stated that could be a possibility and they are looking into that.

Commissioner Driscoll questioned how the Forest Service finds land such as the Brennenbrough Gulch. Barbara stated private land owner will contact their office and express their desire to sell their land to the Forest Service. If there is enough time and the landowners will work with them, they can usually do it.

Commissioner Thompson stated these 160 acres had been spoken about on a national level. They had discussed selling these public lands in order to finance schools, but it was strongly opposed. Commissioner Thompson stated if 20 acres out of the 160 acres is undesirable, they should be able to sell those 20 acres.

Barry gave an update for the Middle East Fork project. They have two stewardship contracts that have been awarded; one is to Rocky Mountain Log Homes and the other is to Bob Lockhart Logging. Some of the issues they are dealing with include roads, the use of helicopters, replacement of fish passages and the economic viability of the area. The merits of this case will be heard later this summer.

In regard to the Gash Creek lumber salvage; they have harvested some of the materials. That appeal is 183 pages long.

The Trapper Bunk House project is a fiscal year 2008 project which includes commercial thinning and burning. The fish culverts will be replaced. Barry indicated they have several other projects for fiscal year 2008.

Barbara stated they are currently waiting on our plan. The impact statement will be out this July, and they hope to make a decision on a new planning rule by January.

Nan stated the Bitterroot National Forest has been selected to provide the capitol Christmas tree in 2008 and they are looking for the 'right' tree. Commissioner Grandstaff asked what kind of tree they will be using. Nan replied Fir or Spruce. They will also produce 1,000 handmade ornaments.

Nan indicated about 75 additional trees for the capitol offices will be needed.

Barb gave an update for visitors travel management. This is being done on an informal basis as they talk to motorized travelers in the summer and winter. They have done an inventory of roads and trails and are deciding which ones they should utilize as ATV or snowmobiling usage.

The Board thanked the Forest Service for their time.